

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEVADA

UNITED STATES OF AMERICA,	)	IN EQUITY NO. C-125-RCJ
	)	Subproceedings: C-125-B
Plaintiff,	)	3:73-CV-00127-RCJ-WGC
	)	
WALKER RIVER PAIUTE TRIBE,	)	
	)	
Plaintiff-Intervenor,	)	<b>Proposed SUPPLEMENTAL CASE</b>
vs.	)	<b>MANAGEMENT ORDER</b>
	)	
WALKER RIVER IRRIGATION DISTRICT,	)	
a corporation, et al.,	)	
	)	
Defendants.	)	
_____	)	

This matter is before the Court on the *United States of America's Motion for a Supplemental Case Management Order and Memorandum of Points and Authorities in Support*. Upon consideration of the motion and for good cause shown, the Court hereby adopts and enters the following Supplemental Case Management Order ("Supplemental CMO"). This Supplemental CMO updates and implements the original *Case Management Order* (Apr. 18, 2000; Doc. B-108) ("CMO").<sup>4</sup> To the extent it changes, modifies or adjusts the CMO, the Court finds that such changes are appropriate and within its authority.<sup>5</sup>

1. Modification of Timing of Bifurcation of Claims in C-125-B: The CMO bifurcated the claims of the Walker River Paiute Tribe ("Tribe") and the claims of the United States of America ("United States") for the benefit of the Tribe (collectively defined as the "Tribal Claims") from all other claims raised by the United States. CMO at pg. 2 and pg. 4, ¶1. The Court continues to believe that bifurcation is appropriate and hereby identifies the sequence and timing of procedural steps to streamline litigation, address the merits of the Tribal Claims, move the Tribal Claims and all other claims in C-125-B to resolution, and

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<sup>4</sup> The CMO directs that once defendants are served, they must file a timely notice of appearance and intent to participate, but that "[n]o answers or other pleading will be required except upon further order of the Magistrate Judge entered thereafter." CMO at pg. 12, ¶13. The CMO's provision that "[n]o default shall be taken for failure to appear" is unchanged. *Id.*

<sup>5</sup> The Court notes that additional Supplemental CMOs will be needed in the future to address litigation steps in this matter that are not addressed herein or to address any necessary changes, modifications and adjustments.

manage this subproceeding in a manner consistent with the Federal Rules of Civil Procedure.

2. Completion of Service: The United States is in the process of completing service pursuant to the CMO. See CMO at pgs. 4-8, ¶¶ 3-8. This service effort applies to the litigation of all claims in Subproceeding C-125-B. Although the CMO recognized that additional parties may need to be joined in later phases of this litigation, CMO at pg. 13, ¶14, well over 2,000 parties have now been joined to this case. If and when additional parties are joined in the future, the Court will address how any such parties will be incorporated into the litigation. The Court enters this Supplemental CMO so that all parties may anticipate the steps and needs associated with litigation and so that this Court may resolve the bifurcated claims efficiently, expeditiously, and fairly.
3. Phase I: Motions Contemplated by Rule 12, FRCP:
  - a. Once the United States and the Tribe have completed service (including publication) and at a date to be identified by the Court, defendants shall submit any motion identified by Rule 12(b) of the Federal Rules of Civil Procedure that they wish to file. Such motions shall address all claims filed by the United States and Tribe in the *First Amended Counterclaim of the United States of America* (July 31, 1997; Doc. B-59) and the *First Amended Counterclaim of the Walker River Paiute Tribe* (Doc. B-58).<sup>6</sup>
  - b. Defendants shall coordinate their filings so that to the extent possible the Court is not overwhelmed by redundant or overlapping filings. Rule 12(g) shall apply to defendants collectively;
  - c. Once any such motions have been filed, the Court will promptly meet with the parties and determine the briefing schedule(s) for these motions, based, in part, on the number of motions filed and the number of issues raised;
  - d. Pursuant to Rule 12(h) of the Federal Rules of Civil Procedure, a defendant's failure to file a motion contemplated under Rule 12(b)(2-5) waives the issue for that defendant; and
  - e. To the extent that a defendant wishes to move the Court for relief under Rule 56 or to otherwise have the Court address a threshold issue not contemplated by Rule 12, such matters will be deferred until after answers are filed and will be the subject of additional case management orders.

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<sup>6</sup> Although these proceedings are bifurcated to address the Tribal Claims, as filed by the United States and the Tribe in their respective First Amended Counterclaims, Rule 12 motions shall address the Tribal Claims as well as all other claims asserted by the United States in its first Amended Counterclaims. Specifically, such motions shall address the Tribe's First Amended Counter Claim and the First through Eleventh Claims for Relief identified in the United States' First Amended Counter Claim.

4. Bifurcation: Except to the extent identified in paragraph 3, above, the Tribal Claims remain bifurcated from the remaining Federal Claims. *See* CMO pg. 2. Answers, discovery and proceedings on the Fourth through Eleventh Claims for Relief in the *First Amended Counterclaim of the United States of America* (July 31, 1997; Doc. B-59) shall continue to be stayed until further order of the Court.
5. Phase II: Upon completion of Phase I, Phase II of this litigation will address the merits of the Tribal Claims. In this phase, defendants shall file answers to the Tribal Claims, and the Court will address the discovery process, motions that require discovery or development of a factual predicate, and all other issues necessary to address the merits of the Tribal Claims.
6. Answers:
  - a. Once the Court resolves those motions described in paragraph 3, above, Defendants shall file Answers to the *First Amended Counterclaim of the Walker River Paiute Tribe* (Doc. B-58) and shall file Answers to the First, Second, and Third Claims for Relief in the *First Amended Counterclaim of the United States of America* (July 31, 1997; Doc. B-59). Such answers shall be filed no later than thirty (30) days after the Court resolves the last of any Rule 12 motions filed pursuant to paragraph 3, above.
  - b. All motions filed in response to any Phase II Answers (*e.g.*, motions to strike certain defenses as a matter of law), will be addressed in the beginning of Phase II.
7. Counterclaims and Crossclaims: At the same time that Answers to the Tribal Claims are due, defendants shall also submit any counterclaims and crossclaims to the Tribal Claims, as filed by the Tribe and/or the United States, that they consider appropriate. Such counterclaims and cross claims shall comply with Rule 13. Answers to these counterclaims and cross claims will be made by a deadline to be set by the Court after it reviews the number and scope of any such filings.

IT IS SO ORDERED this \_\_\_\_day of \_\_\_\_\_, 2012.

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Hon. William G. Cobb  
United States Magistrate Judge